

REMARKS

This responds to the Office Action mailed on August 10, 2006.

Claims 15 – 17 have been added. Claims 1-17 are now pending in this application.

§101 Rejection of the Claims

Claims 1-14 were rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. This rejection is respectfully traversed. In addition, new claims 15-17 are submitted, and believed entirely consistent with claim 5 of Warmerdam, which was found to be allowable.

In paragraph 6 of the Final Office Action, it is indicated that the State Street court was careful to specify that the “useful, concrete and tangible result” it found was “a final share price momentarily fixed for recording purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.” The trading activity was said to be a further practical use of the real world monetary data beyond the transformation in the computer – i.e., “post processing activity”. Paragraph 7 goes on to state that Applicant cites no such specific results to define a useful, concrete and tangible result. Neither does Applicant specify the associated practical application with the kind of specificity the Federal Circuit used.

In response, claim 1 of the patent at issue in State Street was interpreted to transform data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price. This was then stated to be a practical application of a mathematical algorithm, formula or calculation because it produces a useful, concrete and tangible result – a final share price for recording purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.

It should be noted that the claim itself does not recite the practical application stated by the court, but is interpreted to provide the final share price. The practical application itself was not recited in the claim. As stated in the previous response, the practical application of the methods claimed in the present application is derived directly from the claimed decision outcomes, which at least in claims 5 and 14, as well as new claims 15 - 17, involve computers, and are fixed for recording purposes. These decision outcomes have an associated practical application as described in the detailed description at paragraph [0038]: “The goal is not so much

to perfectly predict every attack (although clearly the devastating scenarios need to be responded to), but to identify common vulnerabilities to efficiently utilize resources in protecting such vulnerabilities.” Thus, decision outcomes may, as in State Street, be relied upon by government authorities to protect the public from terrorism. Thus, the currently claimed invention has a practical application, and is not merely taking several abstract ideas and manipulating them together as in Warmerdam.

In paragraph 13 of the Final Office Action, it is stated that “possible motivation” is simply an abstract construct that does not provide limitations in the claims to the transformation of real world data (such as monetary data or heart rhythm data) by some disclosed process. This assertion is respectfully traversed. Motivations relate to real world concepts as illustrated in FIG. 7: destabilize US economy, inhibit US ability to wage war, destabilize US political system, sway international opinion, divide allies and others. When weighted as claimed, these are transformation of data related to real world phenomena, just as a dollar amount represents some quantification of value. As can be seen, there are many possible motivations, and an itemized list may unduly limit the scope of the claim.

Claims 15 and 16 have been added, and characterize different aspects of the invention in terms of actions occurring in a computer system. The claims are similar to claim 1, but specifically recite actions occurring in a computer, such as recording, weighting, combining and creating. They also refer to lists that are fixed for recording. Claim 5 of Warmerdam was found to be patentable, while claim 1 was found only to contain abstract concepts. Claim 5 simply transforms the abstract concepts of claim 1 into a machine with a memory:

“5. A machine having a memory which contains data representing a bubble hierarchy generated by the method of any of claims 1 through 4.”

Even if claim 1 is still found to contain only abstract concepts, claims 15 and 16 include the method elements of claim 1 and further recite a physical computer readable medium that causes a computer to perform a method, and also recite elements that utilize memory accessible by the computer. Data is stored on the computer and transformed by the computer. Claim 16 even recites that a most likely target is identified, a clear real world practical application. Claim

17 identifies the type of model used. Thus, claims 15-17 are analogous to claim 5 of Warmerdam, and recite statutory subject matter.

§112 Rejection of the Claims

Claims 1-14 were rejected under 35 U.S.C. § 112, first paragraph, because current case law (and accordingly, the MPEP) require such a rejection if a 101 rejection is given because when Applicant has not in fact disclosed the practical application for the invention, as a matter of law there is no way Applicant could have disclosed how to practice the undisclosed practical application. This rejection is respectfully traversed for the reasons given above.

For clarification, the Final Office Action on page 11 indicates that Applicant believes that the Federal Circuit regards money as an abstract thing. This is not what Applicant wrote or believes. With respect to page 15, Argument 6, the Applicant only meant to indicate that the claim itself need not recite the practical application. Applicant does agree that the claimed subject matter should have a practical application.

CONCLUSION

In addition to arguing against the rejections, to facilitate prosecution of the Application, Applicant has provided new claims that are believed to comply with both sections 101 and 112. Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6972 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

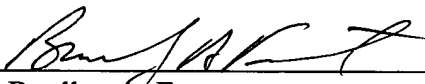
Respectfully submitted,

EDWARD L. COCHRAN

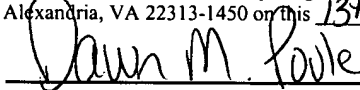
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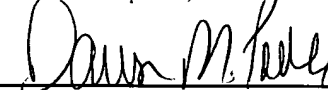
Date 11/13/2006

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